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Fed. 1008. The immunity of a witness from service is to allow him to feel free to come into the state and not to be deterred by fear of suit against himself. Strictly speaking this ought not to apply to officers of a corporation as the legal person served is not the witness. However, since the same reasons would probably influence the corporation officer to remain outside the jurisdiction as would influence an individual, the courts are justified in vacating the service. It should be noted, moreover, that it has been held that service on an officer in the state on corporation business, consisting of a solitary transaction, does not bind the corporation. *Ladd Metals Co. v. American Mining Co.*, *supra*. The court in the instant case did not find it necessary to pass on the question whether the service would also have been invalid on that ground.

REAL PROPERTY—NEW YORK POWERS—EQUITABLE CONVERSION.—One R devised real estate to his widow and two sons as tenants in common. His executors were directed to sell if the devisees should agree. The two sons were appointed executors. The defendant recovered and docketed a judgment against both sons. Thereupon the two sons, as executors, and the widow conveyed to the plaintiff. The defendant issued an execution upon his judgment and the sheriff levied upon the land. The plaintiff sought to have the sale enjoined. *Held*, for the plaintiff. Upon exercise of the power, the lien upon the real estate was extinguished. As the contemplated sale might cast a cloud upon the plaintiff's title, he should have an injunction. *New York Central Ry. v. First Nat'l Bank of the Thousand Islands* (1922) 232 N. Y. 330, 133 N. E. 908.

"Every power of disposition by means of which the grantee is enabled, in his lifetime, to dispose of the entire fee for his own benefit, is deemed absolute." N. Y. Cons. Laws (1909) c. 50, § 153. "Where such a power of disposition is given, and no remainder is limited on the estate of the grantee of the power, such grantee is entitled to an absolute fee." N. Y. Cons. Laws (1909) c. 50, § 151; see 4 Kent's Comm. *348, 349. It has been stated under these statutes that a devisee of an undivided third interest in realty, having also a general power of sale, received the power as to the other two thirds only, it having merged, as to his own third, in his fee. *Hetzel v. Barber* (1877) 69 N. Y. 1. More recent cases hold such powers inseverable, intended to permit the sale of the estate as a whole for the benefit of all the devisees, and not absolute as to the grantee's beneficial interest. *Rankine v. Metzger* (1902) 69 App. Div. 264, 74 N. Y. Supp. 649, *aff'd* (1903) 174 N. Y. 540, 66 N. E. 1115; *cf. Weeks v. Frankel* (1910) 197 N. Y. 304, 90 N. E. 969. This seems the more reasonable view, especially when, as in the instant case, the consent of the devisees is a condition of the exercise of the power. *Cf. Ackerman v. Gorton* (1876) 67 N. Y. 63. Further, if a power is vested in several executors and one dies, the survivor may exercise the power. N. Y. Cons. Laws (1909) c. 50, § 166; see *Matter of Wilkin* (1904) 90 App. Div. 324, 327, 328, 86 N. Y. Supp. 360. Or if one executor resigns or is removed, the others may exercise the power. *Striker v. Daly* (1916) 175 App. Div. 620, 162 N. Y. Supp. 527; *aff'd* (1918) 223 N. Y. 468, 119 N. E. 882 (under some circumstances, at least). Analogously, even if each executor in the instant case were in part disqualified to exercise the entire power—the power over his beneficial interest never having vested in him according to the reasoning in *Hetzel v. Barber*, *supra*—it would seem that its exercise as to that part of the other and competent executor would be sufficient, and the conveyance as a whole good.

Where there has been equitable conversion of real estate under a will, a claim against the devisee cannot constitute a lien on the land. *Darst v. Swearingen* (1906) 224 Ill. 229, 79 N. E. 635; see (1909) 9 COLUMBIA LAW REV. 179. The conversion occurs as of the testator's death. *Schoenberger's Estate* (1908) 221 Pa.

112, 70 Atl. 579. This is so in most jurisdictions even if the sale is not to be until a definite time or until the happening of some designated event. *Handley v. Palmer* (C. C. A. 1900) 103 Fed. 39; *Nelson v. Nelson*, (1905) 36 Ind. App. 331, 75 N. E. 679; *Chick v. Ives* (1902) 2 Neb. Unoff. 879, 90 N. W. 751. In others, no conversion occurs under such circumstances until the time comes or the event happens. *Bank of Ukia v. Rice* (1904) 143 Cal. 265, 76 Pac. 1020; see *Underwood v. Curtis* (1891) 127 N. Y. 523, 533, 534, 28 N. E. 585. But the court will never imply a conversion unless the testator clearly intends it. *Harris v. Achilles* (1909) 129 App. Div. 847, 114 N. Y. Supp. 855. A direction to sell is insufficient, if contingent on consent. *Scott's Estate* (1908) 37 Pa. Super. 198. When there is no conversion, the devisee has an alienable interest in the realty, subject to divestment by the exercise of the power of sale. *Williams v. Lobban* (1907) 206 Mo. 399, 104 S. W. 58; *Hatt v. Rich* (1900) 59 N. J. Eq. 492, 45 Atl. 969. Then, whether or not there has been a conversion, one purporting to hold under the devisee has no claim against the land after the exercise of the power. *Beaver v. Ross* (1908) 140 Ia. 154, 118 N. W. 287. The instant case, therefore, soundly holds that the defendant has no lien upon the realty. The question of equitable conversion, however, is of importance to the defendant because, there having been none, one claiming under the devisee has a lien on the proceeds of the sale. See *Sayles v. Best* (1893) 140 N. Y. 368, 374, 375, 35 N. E. 636; *Williams v. Lobban*, *supra*, 416, 418. Whereas if there has been a conversion, a judgment docketed thereafter, never having constituted a lien against the land, is not a lien on the proceeds of the sale. *Darst v. Swearingen*, *supra*.

SALES—CONTRACT TO SELL FUTURE GOODS—"TIME OF SALE."—In April, S contracted to sell and deliver in September, and B to accept, a quantity of sheeting of I's make, delivery to be at I's mill, "shipping instructions later." During September B sent no instructions, but on October 5th wrote a letter repudiating the contract on the ground of failure to deliver on time. On October 7th S wrote, enclosing invoices and asked for shipping instructions, which B refused to give. S, suing for damages, alleged readiness and willingness to perform, but no tender of delivery. The defence was that under § 43 (3) of the Uniform Sales Act, N. Y. Laws 1911 c. 571, § 124 (3), S had not made a delivery. *Held*, for S. § 43 (3) was inapplicable because the goods were not in existence at the time of the contract to sell. *Percy Kent Co. v. Silberstein* (1922) 192 N. Y. Supp. 498.

The Uniform Sales Act, § 43 (3), defines "delivery" when the goods are in the hands of a third person at the "time of sale." The court, in holding the section inapplicable, assumed that "time of sale" meant "time of contract to sell." This assumption was unnecessary, because there was no specification or appropriation, and thus no specified goods at any time to which the section could apply. The case, however, suggests the novel question of the meaning of "time of sale" in § 43 (3). At common law in such a case there was no delivery within the Statute of Frauds unless the third person attorned. The corresponding section of the English Sale of Goods Act, § 29 (3), is regarded as a codification of this rule. See Chalmers, *Sale of Goods* (8th ed. 1920) 79 note (r); Benjamin, *Sales* (6th ed. 1920) 794 note (e), citing *Bentall v. Burn* (1824) 3 B. & C. 423; see *Boardman v. Spooner* (1866) 95 Mass. 353, 357. At common law, a purported sale of goods in a third person's possession transferred title immediately without attornment. *Sigerson v. Kahmann* (1866) 39 Mo. *206. The question as to when is the "time of sale" is not dependent upon the requirements for delivery. The draftsman of the Uniform Sales Act declares "the most fundamental distinction in the law of sales" to be that between a "contract to sell," *i. e.*, a contract for a subsequent transfer of title, and a "sale" or immediate transfer of ownership. See 1